IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 14TH NOVEMBER 2006 / 23RD KARTHIKA 1928

ST.Rev..No. 40 OF 2005

TA.68/1993 OF OF THE SALES TAX APPELLATE TRIBUNAL, THIRUVANANTHAPURAM

REVISION PETITIONER/RESPONDENT/REVENUE:

STATE OF KERALA, REP. BY
DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

GOVERNMENT PLEADER SRI. V.V. ASOKAN.

RESPONDENTS: APPELLANT/ASSESSEE

DR. ALEXANDER MATHEW,
MANAPPURAM BUNGLOW, PATHANAPURAM.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 14/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & K.P. BALACHANDRAN, JJ.

ST. REV. 40/2005

DATED THIS, THE 14TH NOVEMBER, 2006.

O R D E R

Raman, J.

The State of Kerala, represented by the Deputy Commissioner (Law), Commercial Taxes, Ernakulam, is the revision petitioner.

2. The State impugns the order passed by the Appellate Tribunal in T.A. 68/1993 by which the tribunal allowed the appeal filed by the assessee holding that notice issued for pre-assessment under Section 41 of the Agricultural Income Tax Act, 1991 is defective as it did not accompany a notice under Section 35(2) of the said Act. The correctness of the said view expressed by the appellate authority arises for consideration in this revision.

3. The assessment relates to the year 1989-90 and the assessments were completed on 27.3.1990.

Subsequently, a notice was issued on 5.3.1992, for escaped assessment under Section 41 of the AIT Act and re-assessment was completed on 28.3.1992. The tribunal found that the notice issued under Section 41 did not accompany a notice under Section 35 of the Act. It is the contention of the learned Special Government Pleader appearing for Tax that Section 41 only provides that a notice under the said section shall include all the particulars required to be mentioned in Section 35(2) of the Act and as such a separate notice under Section 35 is not necessary nor contemplated under Section 41 of the Act. Section 41 of the Agricultural Income Tax Act reads as follows:

> (1) If for any reason agricultural income chargeable to tax under this Act has escaped assessment in any financial year or has been assessed at too low a rate, the Agricultural Income Tax Officer may at any time within ten years of the end of that year and subject to the provision of sub-section (2), serve on the person liable to pay the tax, a notice

> containing all or any of the requirements which may be included in a notice under sub-section (2) of section 35 and may proceed to assess or reassess such income and the provisions of this Act, shall, so far as may be apply accordingly as if the notice were a notice issued under that sub-section.
> xxxxxx xxxxxx xxxx xxxxx".

4. From the above provision, it can be seen that the notice to be issued under Section 41 should contain all or any of the requirement which may be included in sub-section 2 of Section 35 before proceeding to assess or re-assess the income. It also provides that all the provisions contained in Section 35 shall in so far as may apply accordingly, as if there is notice issued under that section. Therefore, if a notice is issued under Section 41 containing all the requirements to be included in a notice under Section 35(2), then a separate notice under Section 35(2) as such may not be required to be issued. All that is provided is that the particulars to be included in the notice under

Section 41 shall be such particulars as may be required to be stated in the notice issued under Section 35. However, if the notice issued under Section 41 does not by itself contain such particulars, it may be open to the assessing officer to enclose a notice under Section 35(2) so as to furnish all the particulars required to be stated therein.

5. But in this case, after perusing the notice issued to the assessee, a copy of which was produced as Ext.P4 and made available to us by the counsel for the assessee, we find that this notice is not even issued as contemplated under Rule 64 and in Form 10 thereof.

6. In this connection, it has to be noticed that no separate notice period is prescribed under Section 41. But at the same time all the requirement of Section 35(2) are to be complied with and Section 35(2) provides a minimum of 30 days notice period which is mandatory as held by this Court in **Cochin Plantations Ltd. v.**

Inspecting Asst. Commissioner (1994 (1)759). Even in Form 10 it is specifically provided that 30 days has to be given for filing the reply in terms of the notice so issued. Thus, the notice issued in the present case does not contain the particulars as required under Section 41 and hence for the above reasons, we find that the conclusion reached by the tribunal is correct.

In the circumstances, we find no merit in this revision. It is accordingly dismissed.

P.R. RAMAN,
(JUDGE)

K.P. BALACHANDRAN,
(JUDGE)

knc/-